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Supreme Court, U.S.
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In The

Supreme Court of the United States

WISCONSIN DEPARTMENT OF HEALTH
AND FAMILY SERVICES,

Petitioner,

v.

IRENE BLUMER,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE WISCONSIN COURT OF APPEALS, DISTRICT IV

RESPONDENT'S REPLY TO BRIEF OF UNITED STATES AS AMICUS CURIAE

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First, respondent Irene Blumer agrees with the ultimate conclusion of the Solicitor General that this Court should deny certiorari. While the respondent disagrees with the Solicitor General's analysis of the merits of the case, it is clear that this issue requires more development before it is appropriate for this Court to consider it. It is also clear that the required development will be occurring expeditiously. The Secretary of the Department of Health and Human Services (DHHS) has apparently committed to promulgating clarifying regulations (see Solicitor General's brief at 9, 14-15). Despite the respondent's assertions to the contrary (Resp. reply at 2-3) DHHS is capable of promulgating rules relating to the Medicaid program quickly when it is

necessary and appropriate to do so.[1] Before this Court considers reviewing this issue it should have the benefit of the formal opinion of the Secretary.

Second, as the Solicitor General points out, the regulations will give the Wisconsin Court of Appeals and /or the Wisconsin Supreme Court an opportunity to revisit the issue. Resolution by either of those courts in light of federal regulatory authority could obviate the need for review by this Court altogether.

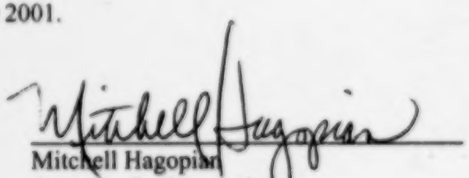
Finally, the respondent in its reply has now requested, without reference to authority, that this Court summarily reverse the decision of the Wisconsin Court of Appeals (see Resp. reply at 4). Summary reversal would be most inappropriate in this case. Nothing in the brief of the amicus curiae suggests that Wisconsin Court of Appeals decision should be summarily reversed. With all due respect to the confusing informal policy views of DHHS and the lower courts that have come to a different conclusion than that reached in this case, there remains the possibility that the Wisconsin Court of Appeals actually got it right—the statute unambiguously requires application of the resource-first methodology. No matter what the ultimate conclusion on this "inordinately complex statutory scheme" (Solicitor General's brief at 15) it is a matter that would require extensive briefing and argument before decision. It is <u>not</u> appropriate for summary reversal.

[1] For example, DHSS recently promulgated a regulation similar in complexity to the one likely to be promulgated here entitled "Medicaid Program; Change in Application of Federal Financial Participation Limits." That regulation was proposed on October 31, 2000 and finalized on January 11, 2001—a span of less than eighty <u>days</u>. See Proposed Rule, 65 Fed. Reg. 64919-64924 (10/31/00); Final Rule, 66 Fed. Reg. 2316 (1/11/01).

CONCLUSION

In accordance with the view of the Solicitor General of the United States, this Court should deny the petition for certiorari.

Dated this 12th day of June 2001.



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